

INDIANA PROSECUTING ATTORNEYS COUNCIL
2014 NEWLY ELECTED SCHOOL

Presentation On
“INFRACTIONS”

Daniel R. Miller
Drug Resource Prosecutor
Indiana Prosecuting Attorneys Council

Statutes, Case Notes, and Sample Forms

INFRACTION PROCEDURE STATUTES

34-28-5-1. Enforcement proceedings.

(a) As used in this section, "probationary license" refers to a license described in [IC 9-24-11-3.3\(b\)](#).

(b) An action to enforce a statute defining an infraction shall be brought in the name of the state of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place. However, if the infraction allegedly took place on a public highway (as defined in [IC 9-25-2-4](#)) that runs on and along a common boundary shared by two (2) or more judicial circuits, a prosecuting attorney for any judicial circuit sharing the common boundary may bring the action.

(c) An action to enforce an ordinance shall be brought in the name of the municipal corporation. The municipal corporation need not prove that it or the ordinance is valid unless validity is controverted by affidavit.

(d) Actions under this chapter (or IC 34-4-32 before its repeal):

(1) shall be conducted in accordance with the Indiana Rules of Trial Procedure; and

(2) must be brought within two (2) years after the alleged conduct or violation occurred.

(e) The plaintiff in an action under this chapter must prove the commission of an infraction or ordinance violation by a preponderance of the evidence.

(f) The complaint and summons described in [IC 9-30-3-6](#) may be used for any infraction or ordinance violation.

(g) Subsection (h) does not apply to an individual holding a probationary license who is alleged to have committed an infraction under any of the following when the individual was less than eighteen (18) years of age at the time of the alleged offense:

IC 9-19

IC 9-21

IC 9-24

IC 9-25

IC 9-26

IC 9-30-5

IC 9-30-10

IC 9-30-15.

(h) This subsection does not apply to an offense or violation under IC 9-24-6 involving the

operation of a commercial motor vehicle. The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring actions brought under this section. Actions may be deferred under this section if:

- (1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;
- (2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with [IC 33-37-4-2\(e\)](#);
- (3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;
- (4) the defendant in the action agrees to pay a fee of seventy dollars (\$70) to the clerk of court if the action involves a moving traffic offense (as defined in [IC 9-13-2-110](#));
- (5) the agreement is filed in the court in which the action is brought; and
- (6) if the deferral program is offered by the prosecuting attorney, the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council.

When a defendant complies with the terms of an agreement filed under this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action under this subsection, the court shall dismiss the action. An action dismissed under this subsection (or IC 34-4-32-1(f) before its repeal) may not be refiled.

(i) (Omitted)

9-30-3-6. Form for traffic information and summons.

- (a) This section does not apply to electronic traffic tickets.
- (b) In traffic cases, the information and summons shall be in substantially the following form:

[Click here to view form](#)

The information and summons shall consist of four (4) parts:

- (1) The original copy, printed on white paper, which shall be the abstract of court record for the Indiana bureau of motor vehicles;

(2) The court copy, printed on white paper;

(3) The police record, which shall be a copy of the information, printed on pink paper; and

(4) The summons copy, printed on white stock.

The reverse sides of the information and abstract of court record shall be substantially as follows, with such additions or deletions as are necessary to adapt the form to the court involved:

[Click here to view form](#)

The notice, the appearance, the plea of either guilty or not guilty, and the waiver shall be printed on the summons. The trimmed size of the paper and stock on which the form is printed shall be nominally four and one quarter (4 1/4) inches by eight and one quarter (8 1/4) inches.

(c) In civil traffic cases, the complaint and summons shall be in substantially the following form:

[Click here to view form](#)

The complaint and summons shall consist of four (4) parts:

(1) The original copy, printed on white paper, which shall be the abstract of court record for the Indiana bureau of motor vehicles;

(2) The court copy, printed on white paper;

(3) The police record, which shall be a copy of the complaint, printed on pink paper; and

(4) The summons copy, printed on white stock.

The reverse sides of the complaint and abstract of court record shall be substantially as follows, with such additions or deletions as are necessary to adapt the form to the court involved:

[Click here to view form](#)

The notice, appearance, plea of either admission, denial, or nolo contendere shall be printed on the summons. The trimmed size of the paper and stock on which the form is printed shall be nominally four and one quarter (4 1/4) inches by eight and one quarter (8 1/4) inches.

(d) The complaint form shall be used in traffic cases, whether the charge is made by a law enforcement officer or by any other person.

(e) Each judicial officer or police authority issuing traffic complaints and summons:

(1) is responsible for the disposition of all the traffic complaints and summons issued under the authority of the officer or authority; and

(2) shall prepare and submit the records and reports relating to the traffic complaints in the manner and at the time prescribed by both the state examiner of the state board of accounts and the bureau.

34-28-5-2. Pleadings in moving traffic violation.

In an action for a moving traffic violation, the pleadings are as follows:

(1) A summons and complaint.

(2) Entry by a defendant of:

(A) an admission to the violation;

(B) a denial of the violation; or

(C) a declaration of nolo contendere in which the defendant consents to entry of judgment for the state without admitting to the violation.

34-28-5-4. Judgments.

(a) A judgment of up to ten thousand dollars (\$10,000) may be entered for a violation constituting a Class A infraction.

(b) A judgment of up to one thousand dollars (\$1,000) may be entered for a violation constituting a Class B infraction.

(c) Except as provided in subsection (f), a judgment of up to five hundred dollars (\$500) may be entered for a violation constituting a Class C infraction.

(d) A judgment of up to twenty-five dollars (\$25) may be entered for a violation constituting a Class D infraction.

(e) Subject to section 1(i) [[IC 34-28-5-1\(i\)](#)] of this chapter, a judgment:

(1) up to the amount requested in the complaint; and

(2) not exceeding any limitation under [IC 36-1-3-8](#);

may be entered for an ordinance violation.

(f) Except as provided in subsections (g) and (h), a person who has admitted to a moving violation constituting a Class C infraction, pleaded nolo contendere to a moving violation constituting a Class C infraction, or has been found by a court to have committed a moving violation constituting a Class C infraction may not be required to pay more than the following amounts for the violation:

(1) If, before the appearance date specified in the summons and complaint, the person mails or delivers an admission of the moving violation or a plea of nolo contendere to the moving violation, the person may not be required to pay any amount, except court costs and a judgment that does not exceed thirty-five dollars and fifty cents (\$35.50).

(2) If the person admits the moving violation or enters a plea of nolo contendere to the moving violation on the appearance date specified in the summons and complaint, the person may not be required to pay any amount, except court costs and a judgment that does not exceed thirty-five dollars and fifty cents (\$35.50).

(3) If the person contests the moving violation in court and is found to have committed the moving violation, the person may not be required to pay any amount, except:

(A) court costs and a judgment that does not exceed thirty-five dollars and fifty cents (\$35.50) if, in the five (5) years before the appearance date specified in the summons and complaint, the person was not found by a court in the county to have committed a moving violation;

(B) court costs and a judgment that does not exceed two hundred fifty dollars and fifty cents (\$250.50) if, in the five (5) years before the appearance date specified in the summons and complaint, the person was found by a court in the county to have committed one (1) moving violation; and

(C) court costs and a judgment that does not exceed five hundred dollars (\$500) if, in the five (5) years before the appearance date specified in the summons and complaint, the person was

found by a court in the county to have committed two (2) or more moving violations.

In a proceeding under subdivision (3), the court may require the person to submit an affidavit or sworn testimony concerning whether, in the five (5) years before the appearance date specified in the summons and complaint, the person has been found by a court to have committed one (1) or more moving violations.

(g) The amounts described in subsection (f) are in addition to any amount that a person may be required to pay for attending a defensive driving school program.

(h) This subsection applies only to infraction judgments imposed in Marion County for traffic violations after December 31, 2010. Subsection (f) applies to an infraction judgment described in this subsection. However, a court shall impose a judgment of not less than thirty-five dollars (\$35) for an infraction judgment that is entered in Marion County. These funds shall be transferred to a dedicated fund in accordance with section 5 [\[IC 34-28-5-5\]](#) of this chapter.

Rule 38. Jury trial of right.

(B) Demand. -- Any party may demand a trial by jury of any issue triable of right by a jury by filing with the court and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten (10) days after the first responsive pleading to the complaint, or to a counterclaim, crossclaim or other claim if one properly is pleaded; and if no responsive pleading is filed or required, within ten (10) days after the time such pleading otherwise would have been required. Such demand is sufficient if indorsed upon a pleading of a party filed within such time.

(D) Waiver. -- The failure of a party to appear at the trial, and the failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(E) constitute waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the other party or parties.

The trial court shall not grant a demand for a trial by jury filed after the time fixed in T.R. 38 (B) has elapsed except upon the written agreement of all of the parties to the action, which agreement shall be filed with the court and made a part of the record. If such agreement is filed then the court may, in its discretion, grant a trial by jury in which event the grant of a trial by jury may not be withdrawn except by the agreement of all of the parties.

CASE NOTES

Filing of complaint:

It is not reversible error to charge a civil defendant by information rather than by complaint or to send a civil defendant a criminal summons, as long as the offenses charged are clearly detailed and the defendant is not misled by the accusations. Terpstra v. State, 529 N.E.2d 839 (Ind. App. 1988).

A citation was proper as a complaint and summons. Ford v. State, 650 N.E. 2d 737 (Ind. App. 1995).

Mechanically stamped signature of the prosecutor complied with the attestation requirement of I.C. 9-30-3-6(b). Ford v. State, 650 N.E. 2d 737 (Ind. App. 1995).

Civil proceeding:

A trial for an infraction is not a criminal proceeding; criminal advisements are not applicable to a civil proceeding. Wirgau v. State, 443 N.E.2d 327 (Ind. App. 1982)

Jury instructions defining the infraction as a criminal case were erroneous. Schumm v. State, 866 N.E.2d 781 (Ind. App. 2007).

Civil sanctions that bear no rational relationship to the goal of compensating the government for its loss are punishment; however, a fine for failure to yield the right of way was rationally related to compensating the government and served several remedial purposes. State v. Hurst, 688 N.E.2d 402 (Ind. 1997).

Traffic offense did not require proof of mens rea. State v. Hurst, 688 N.E.2d 402 (Ind. 1997).

Traffic sanction is civil in nature and not so punitive as to be the equal of criminal punishment. State v. Hurst, 688 N.E.2d 402 (Ind. 1997).

Rights of the defendant:

The trial court is not required to advise an infraction defendant of a right to counsel, a right to a trial by jury, a right to face witnesses against him, a right to compulsory process, a right to require the State prove its case, or a right not to be compelled to testify against himself. Wirgau v. State, 443 N.E.2d 327 (Ind. App. 1982)

The trial court is not required to obtain a defendant's waiver of counsel in an infraction proceeding. Wirgau v. State, 443 N.E.2d 327 (Ind. App. 1982)

Jury Trial:

A defendant in an infraction cause must demand a trial by jury in writing. Terpstra v. State, 529 N.E.2d 839 (Ind. App. 1988).

When a defendant in an infraction cause demands a trial by jury in a timely manner, in accordance with Ind. R. Trial P. 38(b), it is error for the Court to try the defendant without a jury. Cunningham v. State, 835 N.E.2d 1075 (Ind. App. 2005).

Batson v. Ohio challenge to peremptory strikes of jurors applies to jury trials in traffic infraction cases. Schumm v. State, 866 N.E.2d 781 (Ind. App. 2007).

The jury must determine the amount of the defendant's liability. Schumm v. State, 866 N.E.2d 781 (Ind. App. 2007).

For the conduct of a jury trial in an infraction case, Schumm v. State, 866 N.E.2d 781 (Ind. App. 2007), is illustrative. During the case, the defendant filed a motion for summary judgment. Both parties filed motions in limine. The defendant made a Batson challenge during voir dire. The parties tendered proposed jury instructions.

Double Jeopardy:

It was not double jeopardy to charge the defendant with the crime of reckless homicide after the defendant had been convicted of the infraction offense of failure to yield the right of way, based upon the same event. State v. Hurst, 688 N.E.2d 402 (Ind. 1997).